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7 *[Proposed] Counsel for Martifer Solar Aurora, LLC*
8 *and Martifer Solar USA, Inc.*

Electronically Filed February 5, 2014

9 **UNITED STATES BANKRUPTCY COURT**

10 **DISTRICT OF NEVADA**

11 In re

12 MARTIFER AURORA SOLAR, LLC, a
13 Nevada limited liability company,

- 14 ☐ Affects Martifer Aurora Solar, LLC
15 ☒ Affects Martifer Solar USA, Inc.
16 ☐ Affects all Debtors

Case Nos. BK-S-14-10355-abl and
BK-S-14-10357-abl

Jointly Administered under
Case No. BK-S-14-10355-abl

Chapter 11

17 **NOTICE OF ENTRY OF ORDER (1)**
18 **PROHIBITING UTILITY PROVIDERS**
19 **FROM ALTERING, REFUSING OR**
20 **DISCONTINUING SERVICE; (2)**
21 **AUTHORIZING ORDINARY COURSE**
22 **PAYMENTS TO UTILITY PROVIDERS;**
23 **(3) DEEMING UTILITY PROVIDERS**
24 **ADEQUATELY ASSURED OF FUTURE**
25 **PERFORMANCE; AND (4)**
26 **ESTABLISHING PROCEDURES FOR**
27 **DETERMINING REQUESTS FOR**
28 **ADDITIONAL ADEQUATE**
ASSURANCE

Hearing Date: January 28, 2014
Hearing Time: 9:30 a.m.

PLEASE TAKE NOTICE that on the 5th day of February, 2014, the Court entered an Order

1 (1) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Service; (2) Authorizing
2 Ordinary Course Payments to Utility Providers; (3) Deeming Utility Providers Adequately Assured of
3 Future Performance; and (4) Establishing Procedures for Determining Requests for Additional
4 Adequate Assurance [Docket No. 92], a copy of which is attached hereto.

5 Dated this 5th day of February, 2014.

6 **FOX ROTHSCHILD LLP**

7 By s/ Brett A. Axelrod

8 BRETT A. AXELROD (NV Bar No. 5859)

9 MICAELA RUSTIA MOORE (NV Bar No. 9676)

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11 *and Martifer Solar USA, Inc.*

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Honorable August B. Landis
United States Bankruptcy Judge



Entered on Docket
February 05, 2014

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

MARTIFER AURORA SOLAR, LLC, a
Nevada limited liability company,

- ☐ Affects Martifer Aurora Solar, LLC
☒ Affects Martifer Solar USA, Inc.
☐ Affects all Debtors

Case Nos. BK-S-14-10355-abl and
BK-S-14-10357-abl

Jointly Administered under
Case No. BK-S-14-10355-abl

Chapter 11

**ORDER (1) PROHIBITING UTILITY
PROVIDERS FROM ALTERING,
REFUSING OR DISCONTINUING
SERVICE; (2) AUTHORIZING
ORDINARY COURSE PAYMENTS TO
UTILITY PROVIDERS; (3) DEEMING
UTILITY PROVIDERS ADEQUATELY
ASSURED OF FUTURE
PERFORMANCE; AND (4)
ESTABLISHING PROCEDURES FOR
DETERMINING REQUESTS FOR
ADDITIONAL ADEQUATE
ASSURANCE**

Hearing Date: January 28, 2014
Hearing Time: 9:30 a.m.

FOX ROTHSCHILD LLP
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
(702) 262-6899
(702) 597-5503 (fax)

1 The Court, having reviewed and considered Debtor's Motion (the "Motion"),¹ for an Order
 2 (1) Prohibiting Utility Providers From Altering, Refusing or Discontinuing Service; (2)
 3 Authorizing Ordinary Course Payments to Utilities Providers; (3) Deeming Utility Providers
 4 Adequately Assured of Future Performance; and (4) Establishing Procedures for Determining
 5 Requests for Additional Adequate Assurance (the "Order") and the Omnibus Declaration of Klaus
 6 Bernhart filed in support of Debtor's First Day Motions (the "Omnibus Declaration"); all
 7 pleadings and evidence submitted in connection with the Motion; and the oral arguments made at
 8 the hearing held on January 28, 2014; with appearances as noted in the record; it appearing that
 9 this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§157 and 1334; it
 10 appearing that venue of this Chapter 11 Case in this District is proper pursuant to 28 U.S.C. §§
 11 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. §
 12 157(b); notice of the Motion being good and sufficient and appropriate under the circumstances;
 13 and for good cause appearing,

14 **IT IS HEREBY ORDERED**, as to Debtor's existing utility accounts, that:

- 15 1. The Motion is GRANTED;
- 16 2. The utility providers (the "Utility Providers"), as listed on **Exhibit A** attached
 17 hereto, are hereby prohibited from altering, refusing and discontinuing service relationships or
 18 terms on account of prepetition invoices;
- 19 3. Debtor is authorized to (a) provide the Utility Providers, upon request, sums equal
 20 to fifty percent (50%) of Debtor's estimated monthly costs for utility services for each of the
 21 Utility Providers (each sum, a "Utility Deposit"), based upon an average of Debtor's monthly
 22 utility costs for the six (6) months immediately preceding the Petition Date; and (b) pay in the
 23 ordinary course of business amounts due to the Utility Providers for Utility Services (as defined in
 24 the Motion) provided to Debtor prepetition (the "Ordinary Course Payments," and together with
 25 the Utility Deposit, the "Adequate Assurance Payments");

26
 27 ¹ All capitalized terms not otherwise defined herein shall have the same meaning ascribed in the
 28 Motion.

1 4. Upon Debtor's payment of the Adequate Assurance Payments, the Utility Providers
2 shall be deemed adequately assured of Debtor's future performance pursuant to 11 U.S.C. § 366;

3 5. If any Utility Provider believes additional assurance is required, it may request such
4 additional assurance pursuant to the procedures set forth herein as follows:

5 5.1. If a Utility Provider is not satisfied with the assurance of future
6 payment provided by Debtor pursuant to the proposed Utility Deposit, the Utility
7 Provider must serve a written request (the "Request") upon Debtor setting forth the
8 locations for which Utility Services are provided, the account numbers for such
9 locations, the outstanding balance for each account, a summary of Debtor's monthly
10 historical utility use over the past six months on each account, and an explanation of
11 why the Utility Deposit is inadequate assurance of payment;

12 5.2. The Request must be actually received by Debtor and Debtor's
13 counsel, Micaela Rustia Moore, Esq., Fox Rothschild LLP, 3800 Howard Hughes
14 Parkway, Suite 500, Las Vegas, Nevada 89169, within 45 days of the date of the
15 interim order granting this Motion (the "Request Deadline");

16 5.3. Without further order of the Court, Debtor may enter into agreements
17 granting additional adequate assurance to a Utility Provider serving a timely Request,
18 if Debtor, in its discretion, determines that the Request is reasonable;

19 5.4. If Debtor believes that a Request is unreasonable, then Debtor shall,
20 within 30 days after the Request Deadline date, file a motion pursuant to section
21 366(c)(2) of the Bankruptcy Code (a "Determination Motion"), seeking a
22 determination from the Court that the Utility Deposit, plus any additional
23 consideration offered by Debtor, constitutes adequate assurance of payment. Pending
24 notice and a hearing on the Determination Motion, the Utility Provider that is the
25 subject of the unresolved Request may not alter, refuse, or discontinue services to
26 Debtor nor recover or setoff against a prepetition date deposit; and

1 5.5. Any Utility Provider that fails to make a timely Request shall be
2 deemed to be satisfied that the Utility Deposit provided to it constitutes adequate
3 assurance of payment.

4 **IT IS FURTHER ORDERED** that:

5 6. If Debtor supplements the list on **Exhibit A** attached hereto subsequent to the filing
6 of this Motion, Debtor will serve a copy of this Motion and the signed order granting the Motion
7 (the "Order") on any Utility Provider that is added to the list by such a supplement (the
8 "Supplemental Service").

9 7. Concurrently with the Supplemental Service, Debtor will file with the Court a
10 supplement to **Exhibit A** adding the name of the Utility Provider so served. The added Utility
11 Provider shall have 30 days from the date of service of this Motion and the Order to make a
12 Request. In addition, Debtor may also provide a Utility Deposit to the Utility Provider that is
13 added to the list by such supplement without further order from the Court.

14 8. Finally, the Order provides that Debtor may terminate the services of any Utility
15 Provider by providing written notice (a "Termination Notice"). Upon receipt of a Termination
16 Notice by a Utility Provider, pursuant to the relief requested by Debtor herein, the Utility Provider
17 shall immediately refund any Utility Deposit and/or prepetition deposit to Debtor, without giving
18 effect to any rights of setoff or any claims the Utility Provider may assert against Debtor. The
19 immediate refund of a Utility Deposit or prepetition deposit by a Utility Provider whose services
20 are terminated is fair and appropriate under the circumstances because the Utility Provider would
21 no longer require adequate assurance of future payment by Debtor.

22 **IT IS FURTHER ORDERED**, as to new accounts opened by Debtor as debtor-in-
23 possession, that:

24 9. Utility Providers and any other company providing Utility Services to Debtor shall
25 treat Debtor like any other customer under applicable public utility regulations.

26 10. If a Utility Provider or any other company providing Utility Services to Debtor
27 discriminates against Debtor on account of its bankruptcy filing by seeking to impose an
28 additional or higher deposit or other requirements, the Court will consider a request for relief by

1 Debtor with notice to the utility provider on an expedited basis.

2 **IT IS FURTHER ORDERED** that:

3 11. Debtor is authorized and empowered to take all actions necessary to implement the
4 relief granted in this Order.

5 12. This Court shall retain jurisdiction to hear and determine all matters arising from
6 the implementation of this Order.

7 13. The terms and conditions of this Order shall be immediately effective and
8 enforceable upon its entry.

9 14. Except to the extent expressly provided herein and any actions taken pursuant
10 hereto, nothing herein shall be deemed: (i) an admission as to the validity of any claim against
11 Debtor; (ii) a waiver of Debtor's right to dispute any claim on any grounds; (iii) a promise or
12 requirement to pay any claim; (iv) an implication or admission that any particular claim is of a
13 type specified or defined hereunder; (v) a request or authorization to assume any agreement,
14 contract or lease pursuant to section 365 of the Bankruptcy Code; or (vi) a waiver of Debtor's
15 rights under the Bankruptcy Code or any other applicable law.

16 15. Except to the extent expressly provided herein and any actions taken pursuant
17 hereto, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the
18 status of, any claim held by any person.

19 16. Debtor's banks and financial institutions are authorized and directed to process,
20 honor and pay, to the extent of funds on deposit, any and all prepetition checks, wire transfer
21 requests or intercompany transfer requests issued by Debtor, whether pre or postpetition, subject
22 to, and in accordance with, the terms of this Order. Debtor is authorized to reissue checks, wire
23 transfer requests or intercompany requests where such method of payment has been dishonored.

Prepared and Respectfully Submitted by:

FOX ROTHSCHILD LLP

BY /s/Brett A. Axelrod

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*[Proposed] Counsel for Martifer Solar Aurora, LLC
and Martifer Solar USA, Inc.*

APPROVED/DISAPPROVED:

OFFICE OF THE UNITED STATES TRUSTEE

BY /s/J. Michal Bloom

J. Michal Bloom

Trial Attorney for Acting U.S. Trustee,

Tracy Hope Davis

APPROVED/DISAPPROVED:

KOLESAR & LEATHAM

BY /s/ Natalie M. Cox

Natalie M. Cox

400 S. Rampart, Suite 400

Las Vegas, NV 89145

Michael Gerard Fletcher

Reed S. Waddell

FRANDZEL ROBINS BLOOM & CSATO, L.C.

6500 Wilshire Blvd., 17th Fl.

Los Angeles, CA 90048-4920

Counsel for Cathay Bank

1 **APPROVED/DISAPPROVED:**

2 **THE SCHWARTZ LAW FIRM, INC.**

3 BY /s/Samuel A. Schwartz

4 Samuel A. Schwartz

5 Bryan A. Lindsey

6 6623 Las Vegas Blvd. South, Suite 300

7 Las Vegas, NV 89119

8 *Counsel for Martifer Solar, Inc.*

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CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows:

- ☐ The Court has waived the requirement of approval in LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

J. Michal Bloom, Trial Attorney
for Acting U.S. Trustee,
Tracy Hope Davis
APPROVED

Natalie M. Cox
Kolesar & Leatham

Michael Gerard Fletcher
Reed S. Waddell
Frandzel Robins Bloom & Csato, L.C.
for Cathay Bank
APPROVED

Samuel A. Schwartz
Bryan A. Lindsey
The Schwartz Law Firm, Inc.
for Martifer Solar, Inc.
APPROVED

- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

###

EXHIBIT A
Utility Providers

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Account No.	Debtor	Vendor Names	Type of Utility
4100050113	Martifer Solar USA, Inc.	Av	Office Phone
6000687956	Martifer Solar USA, Inc.	Citrix	Office Phone
169 703 4842 7	Martifer Solar USA, Inc.	Gas Company	Gas
4000000295560	Martifer Solar USA, Inc.	XO Communications	Office Phone
042 215 1000	Martifer Solar USA, Inc.	LAD	Power
10095489	Martifer Solar USA, Inc.	PowerNet Global	Office Phone
772521237-00001	Martifer Solar USA, Inc.	Verizon (Cells)	Cell Phone
772521237-00002	Martifer Solar USA, Inc.	Verizon (Air Cards)	Cell Phone
01 1717 1128693497 07	Martifer Solar USA, Inc.	Verizon (Fax)	Office Phone
8448 20 034 0249522	Martifer Solar USA, Inc.	Time Warner Cable	Cable TV
2-35-542-0688	Martifer Solar USA, Inc.	Southern CA Edison	Power
Martifer Solar USA	Martifer Solar USA, Inc.	GeekTek IT Services, Inc. ¹	IT Service

¹ Added at the January 28, 2014 hearing based on counsel's representations.